

REMARKS

Claim 1 has been amended to focus on oxyethylenated esters which may or may not also contain oxypropylenated groups. Support for this amendment exists, *inter alia*, at pages 10-13 of the present application.

Also, pursuant the Board's discussion at page 5 of the decision, the language "thickening agent" and "thickening effective" has been deleted from claim 1.

Claim 11 has been amended in a non-limiting manner to require the oxyethylenated ester to be represented by the identified formula.

Claim 12 has been amended to require the oxyethylenated ester to be based on a polyol and a fatty acid, support for which exists, *inter alia*, at page 13 of the present application.

Claim 23 has been canceled.

Claim 24 has been added, requiring the ester to contain only oxyethylenated groups.

Claim 25 and 26 have been added, requiring specified polyols, support for which exists at page 13, line 9 of the present application.

Claims 1-9, 11-21 and 24-26 are currently pending.

In its July 14, 2009, decision, the Board upheld the rejection under 35 U.S.C. § 112, first paragraph, based on PEG-800 not satisfying the written description requirement. However, given the above amendments to claim 1 in which the PEG limitation (limitation (a)) has been deleted, Applicants respectfully submit that this rejection has been rendered moot and should be withdrawn.

The Board also upheld the rejection of the pending claims under 35 U.S.C. § 103 as

obvious over Glenn. In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

In the Rule 132 declaration submitted October 29, 2002, Applicants demonstrated that oxyethylenated esters have superior properties in the invention compositions as compared to oxypropylenated ethers. Accordingly, the claims have been amended to focus on oxyethylenated esters.

Although Glenn appears to mention “polyethylene esters of fatty acids” when discussing the lathering surfactants that could possibly be added to his compositions (see, pages 14-16, including page 16, line 27), Applicants respectfully submit that this text would not lead one of ordinary skill in the art to the invention compositions.

First, in his discussion of nonionic surfactants for possible use as lathering surfactants, Glenn (on page 16) does not mention polyethylene ethers of fatty acids. This omission is surprising given that more than half of the specifically identified exemplary nonionic surfactants in Glenn (at page 15) are ethers such as hexeth, deceth, dedeceth and hexadeceth compounds. In view of Glenn’s focus on ethers on page 15, Applicants respectfully submit that Glenn’s discussion on page 16 is erroneous and would be recognized as erroneous by one of ordinary skill in the art, meaning that the disclosure on page 16 is too minimal and/or uninformative to lead one of ordinary skill in the art to the claimed invention.

Second, the examples in the present application demonstrate that Glenn’s disclosure related to lathering surfactants is too broad to lead one of ordinary skill in the art to the invention compositions. Comparative example 2 (pages 24-25) does not contain PEG-120 methylglucose dioleate, an oxyalkylenated ester as required by the pending claims (see,

claims 12, 25 and 26). However, comparative example 2 does contain two lathering surfactants (a betaine and a sulphate). (See, Glenn at page 16). This comparative composition is a “translucent liquid product like water.” Thus, this composition which contained two of Glenn’s acceptable lathering surfactants is unacceptable. However, when the oxyethylenated ester PEG-120 methylglucose dioleate is added, the resulting composition is a “thick translucent gel.” (Example 1, pages 24-25). Thus, adding the claimed oxyalkylenated ester compound results in a product having superior, more desirable properties, whereas adding Glenn’s lathering surfactants does not.

Finally, Applicants note that the invention compositions require the presence of (1) at least one foaming surfactant, (2) at least 1 % by weight of at least one hydrophilic silica, **and** (3) at least one oxyethylenated ester. As demonstrated in comparative examples 1-3 set forth on pages 24 and 25 of the present specification, if one of these required ingredients is missing, the resulting composition is unacceptable. In stark contrast, invention example 1 set forth on pages 24 and 25 demonstrates that compositions containing all three of the required ingredients possess superior, more desirable properties. These examples demonstrate the criticality of having all three of the required ingredients present in the same composition.

For such compositions to be obvious under 35 U.S.C. § 103, Glenn must motivate or suggest to one skilled in the art to combine all three required ingredients into a single composition. Glenn, however, does not provide the necessary suggestion or motivation

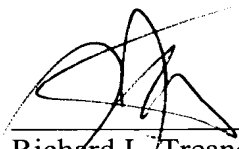
For all of the above reasons, Glenn cannot teach or suggest the invention compositions, and no case of *prima facie* obviousness has been set forth.

Application No. 09/903,785
Reply to Decision on Appeal

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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